IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2185 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

LAKHMAJI ALIAS LAKMO ALIAS LAXMAN CHUNAJI VANZARA - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MS KRISHNA U MISHRA for Applicant(s) : 1,
MR AY KOGJE APP for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/04/2007

ORAL JUDGMENT

The petitioner has challenged an order dated 26th July, 2006 passed by the Dy. Commissioner of Police, Ahmedabad City, Zone 6, by which is ordered to be externed for a period of two years from the city limits of Ahmedabad, its adjoining rural areas and Districts of Mehsana and Gandhinagar. The petitioner has also challenged the appellate order dated 24th November, 2006 passed by the State Government rejecting the appeal of the petitioner against the order of externment.

2. On 30th August, 2005, a show cause notice under section 59 of the Bombay Police Act, 1951 (hereinafter referred to as the "B.P.Act") came to be issued against the petitioner calling upon to show cause why he should not be externed for a period of two years. The allegations against the petitioner included eight different grounds including that the petitioner is a headstrong person, that he forcibly collects installments from the traders in the locality, that he extorts money from people, that he

teases woman in the area etc. In addition to these allegations the show cause notice also stated that the petitioner is involved in four different criminal cases of offences of breach of prohibition and breach of prohibition of gambling etc.

3. The petitioner replied to the show cause notice vide his representation dated 28th November, 2005 and denied the allegations.

4. The competent authority under the B.P.Act however, found that there was sufficient material against the petitioner to pass an order of externment. By impugned order dated 26th July 2006, therefore, the petitioner was externed for a period of two years from the above mentioned areas. The appeal of the petitioner failed. He has, therefore, filed this petition challenging the said orders.

5. Learned advocate Shri Amrish Pandya for Ms. K.U.Mishra appearing for the petitioner submitted that the show cause notice is vague and no particulars have been given of the instances when the

petitioner had assaulted any one or extorted money etc. as alleged in the show cause notice. In absence of any such particulars, the petitioner had no opportunity to represent his case before the authorities.

6. It was also contended that the authorities took into account statements of secret witnesses in support of the allegations against the petitioner whereas no reference was made in the show cause notice that such statements have been recorded nor even general contents thereof disclosed. It was, therefore, submitted that the impugned orders suffer from material irregularities.

7. In support of his contention, learned advocate placed reliance on decision of learned Single Judge of this Court in case of **Kalubhai Becharbhai Gohil v. State of Gujarat & Anr. reported in 2003 (2) GLR page 1612,** wherein the learned Judge was pleased to set aside the order of externment on the ground that notice was vague which resulted in denial of opportunity of effective representation to the

petitioner therein. For the same purpose reliance is also placed on un-reported judgment of learned Judge of this Court dated 25th September, 2006 rendered in Special Criminal Application No.642 of 2006.

8. Learned APP Shri Kogje opposed the petition and submitted that the authorities have passed the order in accordance with the provisions contained in the B.P.Act. There was sufficient material on record in support of the allegations against the petitioner. He submitted that from the nature of proceedings it is not possible to supply the statements of secret witnesses of the petitioner since on account of terror created by the petitioner such witnesses do not readily come forward to depose against him.

9. Having heard learned advocates for the parties, I find that the petition is required to be allowed on the short ground that in the show cause notice there is no mention of any recording of statements of secret witnesses. It is not in dispute that such statements were recorded. It is also not in dispute that such statements were taken into consideration by

the authorities for passing the impugned order of externment. In that view of the matter the observations made by the learned Single Judge of this Court in case of **Haresh alias Kali Mohandas v. Sub-Divisional Magistrate, Anajar and Anr. reported in 2003 CRI. L.J. 4379,** would squarely apply. The learned Judge had referred to the decision of the Division Bench in case of **Aswin Chandulal Jaiswal v. Deputy Commissioner of Police, Vadodara and Anr. reported in 1990 (1) GLH 314,** which observations are reproduced herein below.

> *"9. Shri Gupta has also stated in his affidavit that the Inspector, Vadi Police Station, Vadodara, had recorded statements of 11 persons in confidence. He further stated that he had applied mind on the relevant material of the case produced before him, which includes the statement of the persons recorded by the police. It is not stated in the notice that the statements of the witnesses were recorded by the police. If at all any such statements would have been recorded and intended to be relied upon, at least, reference of the*

statements, without disclosing the names, with the time and place of such alleged illegal activities of the petitioner should have been made in the notice so that the petitioner could have got an opportunity to explain the said circumstances or lead evidence. Without giving him an opportunity or even letting the petitioner know that statements were recorded the Deputy Commissioner of Police has relied on statements of 11 persons. It is true that general allegations are only required to be made in the notice, but when statements are relied upon for the externment order, at least, the person to be affected by such order should be given an opportunity to explain the allegations in the statements. The petitioner was, therefore, deprived of the opportunity to explain the circumstances, which weighed considerably with the externing authority and, therefore, also the order is vitiated."

10. In the result, situation here also being identical the order of externment as upheld by the appellate authority cannot sustain. The same is,

therefore, quashed. In the result, the petition is allowed. Rule is made absolute. Direct service is permitted.

[AKIL KURESHI, J.]

//smita//